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IN THE

Supreme Court of the United States

October Term, 1954

No. 358

WAIALUA AGRICULTURAL COMPANY, LIMITED, *Petitioner*

v.

CIRACO MANEJA, ET AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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v.

CIRACO MANEJA, ET AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Waialua Agricultural Company, Limited, respectfully prays that a writ of certiorari issue to review the judgment entered in the above entitled cause by the United States Court of Appeals for the Ninth Circuit, reversing the judgment entered by the District Court of the United States for the District of Hawaii.

OPINIONS BELOW

The opinion of the District Court (Appendix, pp. 24-98) is reported in 97 F. Supp. 198, and also in 10 WH Cases 287 and 20 Labor Cases ¶66,531.[1] The opinion of the

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[1] The findings of fact and conclusions of law of the District Court, which are not reported, appear at R. 190-307 and 308-320. "R." as used herein refers to pages in the record printed in the Court of Appeals, nine copies of which have been filed with the Clerk of this Court pursuant to Rule 21(4).

Court of Appeals (Appendix, pp. 1-22) is reported in 12 WH Cases 172 and 25 Labor Cases ¶68,404. The opinion of the Court of Appeals on Petitioner's petition for rehearing (Appendix, pp. 22-23) is reported in 12 WH Cases 254 and 26 Labor Cases ¶68,645. The opinion of the Court of Appeals in a prior proceeding (Appendix, pp. 98-118) is reported in 178 F. (2d) 603.

JURISDICTION

The judgment of the Court of Appeals herein was dated and entered on May 5, 1954 (Appendix, p. 22). Petitioner filed a timely petition for rehearing on June 2, 1954, which was denied by order dated and entered on June 24, 1954. *Id.*, p. 23. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion in entertaining Petitioner's declaratory judgment suit to resolve and terminate the long-standing controversy between the parties as to the application of the Fair Labor Standards Act to Respondents, who were employed by Petitioner in enumerated tasks[2] during specified work-

[2] Such tasks consisted of the following: (i) growing, cultivating, and harvesting sugarcane; (ii) hauling such sugarcane produced by Petitioner from the fields to the mill and repairing, maintaining and servicing equipment and facilities used in such hauling; (iii) grinding such sugarcane at the mill into raw sugar and molasses, and repairing, maintaining and servicing the mill and its equipment; (iv) temporarily storing, loading and shipping such raw sugar and molasses; (v) repairing and maintaining field implements; (vi) such other incidental operations as were necessary and indispensable to the foregoing; and (vii) making dwelling repairs and maintaining related domestic facilities.

weeks in 1946-1947 and who had counterclaimed under Section 16(b) of the Act for overtime compensation and damages allegedly due for such work-weeks.

2. Whether the Court of Appeals erred in reversing the District Court and in ordering dismissal of Petitioner's declaratory judgment suit on the ground the parties were in "apparent collusion" because they stipulated all material facts and separately failed to contest the constitutionality of the Act as applied to agricultural employment, where the actual controversy between the parties involved the application of certain statutory exemptions on undisputed facts and where the constitutional issue was insubstantial as shown by prior decisions of this Court.

3. In the foregoing circumstances, whether the judgment of the Court of Appeals should be reversed with directions to review on the merits the issues of statutory construction which were presented by the parties and the record and were determined by the judgment of the District Court.

STATUTORY PROVISIONS INVOLVED

The case arises under the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. §201 *et seq.*), hereinafter called 'the Act'. The pertinent provisions of the Act which are involved are as follows:

Section 3(b) defines "Commerce" to mean—

> ". . . trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof".[3]

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[3] The Fair Labor Standards Amendments of 1949 (63 Stat. 910, effective January 25, 1950) made certain changes in Sections 3(b) and 3(j). No issue is presented herein under the 1949 Amendments, however, since this proceeding is solely concerned with application of the Act to employees in specified workweeks in 1946-1947. *Infra*, pp. 5, 7-8.

Section 3(c) defines "State" to mean—

> ". . . any State of the United States or the District of Columbia or any Territory or possession of the United States".

Section 3(j) defines "Produced" to mean—

> ". . . produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State".

Section 7(a) provides that no employer shall employ any of his employees "who is engaged in commerce or in the production of goods for commerce" for a workweek longer than 40 hours—

> ". . . unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed".

Section 13(a)(6) exempts from both the wage and hour provisions of the Act "any employee employed in agriculture . . .". Section 3(f) defines "Agriculture" to include—

> ". . . farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to

storage or to market or to carriers for transportation to market."

Section 7(c) provides that—

"In the case of an employer engaged . . . in the processing of . . . sugarcane . . . into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) [the overtime provisions of the Act] shall not apply to his employees in any place of employment where he is so engaged . . ."

STATEMENT OF THE CASE

Petitioner operates a sugar plantation on the Island of Oahu, Territory of Hawaii, engaged in the growing, cultivating and harvesting of sugarcane and in the processing of such sugarcane into raw sugar and molasses (R. 31). Respondents are 40 named individuals[4] who were employed by Petitioner on its plantation between November 20, 1946 and September 14, 1947 (R. 9-10, 18, 123), performing various tasks summarized above (p. 2, note 2). Petitioner was duly substituted for a predecessor corporation which had originated the action (Appendix, p. 27).

The jurisdiction of the District Court in this case was based upon §24 and §274d of the Judicial Code as amended (now 28 U.S.C. §§1337 and 2201).

The issues presented necessitate a somewhat detailed statement of the background of this litigation, beginning with the earlier proceeding referred to in the opinion below (Appendix, p. 3, note 7).

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[4] The complaint in the District Court named 42 individuals as defendants, but two of these were held exempt from the Act during the period involved, and no appeal was taken from such holding (R. 308-310, 325, 339).

Proceedings in Previous Appeal

In April, 1947, Petitioner instituted a class action for declaratory relief in the United States District Court for the District of Hawaii, pursuant to Federal Rule 23(a) and appropriate provisions of the Judicial Code. The defendants named in that original complaint were employees of Petitioner, a union which was the collective bargaining representative of the employees and an official of that union. Petitioner prayed in that action for a declaratory judgment to resolve the controversy between the parties as to application of the overtime provisions of the Act to the employee defendants and all its other employees similarly situated.[5] The defendants filed a counterclaim under Section 16(b) of the Act, to recover unpaid overtime compensation for work performed by the employee defendants and to recover liquidated damages, costs and attorneys' fees. The District Court ordered a separate trial of the counterclaim, to take place subsequent to determination of the issues presented by the declaratory judgment suit.

Following trial of the action for declaratory judgment, the District Court entered judgment on the merits, partly for defendants and partly for Petitioner. 77 F. Supp. 480. Both parties appealed to the United States Court of Appeals for the Ninth Circuit, which reversed and remanded. (Appendix, pp. 98-118). The Court of Appeals stated that the judgment of the District Court was "a nullity" because, in the Court's view, it gave "no mandate or command" as to the employee defendants and therefore did not declare their rights with the positiveness required of a judgment; and because the judgment was deemed unsupported by sufficiently detailed and specific findings of fact (Appendix, pp. 101-103, 105, 113).

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[5] See Record in No. 588, October Term 1949, *Waialua Agricultural Company, Limited v. Ciraco Maneja, et al*, pp. 2 *et seq.*

The Court of Appeals also criticized the class representation aspects of the action, the joinder of the union and a union official as parties defendant, the stipulation of all facts, the failure to place time limits on the scope of the action, and the omission to adduce testimony by any employee defendant. (Appendix, pp. 113-116). The Court of Appeals concluded:

> "Refusal to entertain a petition for declaratory judgment is peculiarly within the discretion of the Trial Court. If a 'concrete set of facts' would be supplied to which the statute could be fitted and thereby 'an adequate and effective judgment' rendered, it would be proper to proceed. For such a judgment would satisfy the necessity of firmly founded fact findings and the elements requisite for a plea of res judicata in subsequent litigation. . . However, we leave this as a suggestion only and not as a direction. . .
> ". . . The cause is therefore remanded for further proceedings in accordance with this opinion, either for dismissal for the reason that no ground has been shown for entry of a declaratory judgment or to permit the entry of detailed findings as to each employee defendant, based upon an adequate record." (Appendix, pp. 117, 118).

This Court denied certiorari, 339 U.S. 920.

Proceedings in Present Appeal

After remand, Petitioner amended its bill of complaint, by leave of the District Court, to eliminate the class representation aspects of the suit, and to omit as parties defendant the union, the union official, and certain employees (R. 4-5). The amended complaint was filed against 42 named individuals who were employed on Petitioner's plantation in specified activities during workweeks from November 20, 1946 through September 14, 1947; and prayed for a declaratory judgment to resolve Petitioner's prolonged and continuing controversy with each of the defendants as to application of the overtime

provisions of the Act to be specified activities in the aforesaid workweeks (R. 6-14). Petitioner invoked the jurisdiction of the District Court under §24 and §274d of the Judicial Code as amended (now 28 U.S.C. §§1337, 2201), and contended in substance that all the defendants were exempt from the wage and overtime provisions of the Act during the workweeks involved by reason of the exemptions under Sections 13(a)(6) and 7(c) (R. 11-12, 13-14). Defendants filed their "Answer to Amended Complaint, and Counter-Claim, Cross-Claim, and Cross-Complaint", which continued to set up their alleged action under Section 16(b) of the Act for alleged unpaid overtime compensation, liquidated damages, costs and attorneys' fees (R. 16, 18-19, 24-26).[6] The averments of the counterclaim were put in issue by Petitioner's "Reply and Answer to Counter-Claim, Cross-Claim, and Cross-Complaint" (R. 20-24).

The District Court entered an order under Federal Rule 42(a) requiring that all claims and issues presented in both suit and counterclaim be heard and tried jointly (R. 5-6; Appendix, p. 26). Upon the joint trial, a precise record was adduced showing with respect to each Respondent the particular workweeks worked by him during the period of time covered by the litigation; the number of hours worked by him in each such workweek; his compensation in each such workweek, including the amount of overtime compensation paid him and the number of hours for which such overtime compensation was paid; and the duties performed by him in each such workweek. Furthermore, while all material facts were set forth in a lengthy Stipulation of the parties,[7] 22 of the 42 de-

[6] The counterclaim stated that it was asserted under the Fair Labor Standards Act (R. 18). The District Court stated that the counterclaim was filed under Section 16(b) of the Act. Appendix, p. 26. The allegations of the counterclaim and the prayer therein clearly establish it is an action under Section 16(b) of the Act.

[7] See pp. 32-864 of the original transcript of record herein, certified by the Court of Appeals under Rule 21(1).

fendants testified orally, and all supported the truth and accuracy of the Stipulation except in certain minor respects (E.g. R. 409-410, 423-424, 434-435, 446-447, 458-459; see also R. 615-617, 619, 620-621). In such minor respects the Stipulation was thereafter amended by the parties to conform with the oral testimony.[8] Thereafter, the parties briefed and argued their opposing interpretations of the statutory provisions involved.

The District Court entered detailed findings of fact and conclusions of law with respect to all claims and issues presented in the trial of the consolidated actions (R. 190 *et seq.*, 308 *et seq.*). Such findings and conclusions showed as to each Respondent, in each of the workweeks in controversy during the period of time covered by the litigation, a detailed description of the work performed by the Respondent, the number of hours worked by him, his regular hourly rate of pay, whether he had received overtime compensation for hours of work in excess of 40,[9] whether he was exempt under either Section 13(a)(6) or Section 7(e), and the amount of unpaid overtime compensation, if any, which Petitioner owed him.[10] The District Court thereafter entered a single judgment (R. 321 *et seq.*) entitled "Declaratory Judgment and Judgment

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[8] See Amendment to Stipulation filed September 5, 1950, pp. 2026-2034 of the original certified transcript of record filed herein under Rule 21(1). See also R. 618-619.

[9] In the case of some Respondents who received overtime compensation for hours of work in excess of 40 per week in certain workweeks, there is a controversy between the parties as to whether Petitioner was obligated under the Act to pay such overtime, E.g., Hernandez (R. 311), Cumlat (R. 315) and Hamamoto (R. 318).

[10] Petitioner paid overtime to all Respondents for hours worked by them in excess of 48 in a workweek, and therefore the recovery of overtime pay sought by Respondents and involved herein is limited to hours in excess of 40 per week, up to and including 48. See Appendix, p. 21, note 42. Petitioner paid overtime, for hours in excess of 48 in a week, pursuant to the applicable collective bargaining contract (R. 141, 143).

Awarding Defendants Overtime Compensation, Liquidated Damages, Costs, and Attorney's Fees". The Judgment was divided into two parts. Part I was called "Declaratory Judgment" (R. 322) and Part II was entitled "Judgment Awarding Defendants Overtime Compensation, Liquidated Damages, Costs, and Attorneys' Fees" (R. 336). Thus the District Court's judgment disposed of all claims and issues raised in Petitioner's suit for declaratory judgment and in Respondents' counterclaim under Section 16(b) of the Act.

The Court of Appeals, while recognizing that its earlier instructions and suggestions had been followed on remand (Appendix, pp. 3-4, 7), nevertheless reversed the judgment of the District Court for "error in approach" (Appendix, p. 2), and directed that "the proceeding be dismissed for abuse of discretion in entertaining a petition for declaratory judgment here and attempting to settle a question of jurisdictional and constitutional construction therein". (Appendix, pp. 16-17). The Court then filed its judgment providing in general terms that "the judgment of the said District Court in this cause be, and hereby is reversed for proceedings in accordance with the opinion of this court" (Appendix, p. 22).

In substance the Court of Appeals' opinion stated that Petitioner and Respondents were in apparent collusion because they had stipulated all material facts, and because neither had contested the constitutional validity of the Act under the commerce clause as applied to the agricultural employment of Respondents here involved (Appendix, pp. 2, 4, 10, 12, 18, 19, 23). In consequence, the Court of Appeals held that the District Court had abused its discretion in entertaining Petitioner's suit for declaratory judgment, and ordered that that suit be dismissed.

Petitioner thereupon on June 2, 1954 filed in the Court of Appeals its petition for rehearing, praying that the opinion and judgment be modified to clarify the Court's

disposition of the counterclaim in relation to the dismissal of the complaint. The counterclaim involved important issues affecting both parties that had been fully tried and determined in the District Court and were fully briefed and argued in the Court of Appeals. Petitioner also urged that dismissal of the complaint should not affect disposition of the counterclaim, since the District Court had jurisdiction over the latter, independently of the former, under Section 16(b) of the Act and 28 U.S.C. §1337. Petitioner urged that the Federal Rules of Civil Procedure as a whole oppose piecemeal disposition; that such Rules direct that an appropriate judgment be entered on the substance of an action irrespective of any technical errors in legal theory or approach or in demand for judgment (Rules 15(b) and 54(c)); and that the courts had no discretion to refuse to entertain the counterclaim. Specifically the petition for rehearing prayed that the opinion and judgment be amended to direct that the counterclaim be dismissed on the merits, inasmuch as the opinion of the Court of Appeals manifested its view that each Respondent was totally exempt from the Act under Section 13(a)(6) in each workweek covered by the counterclaim. In the alternative, the petition for rehearing prayed that if the Court of Appeals concluded that the counterclaim should be dismissed for reasons other than on the merits, then the opinion and judgment should be amended so as unequivocally to direct such dismissal as a basis for further proceedings. On June 24, 1954 the Court of Appeals denied the petition for rehearing. Its memorandum opinion stated that, "The Court construes what is called the cross-complaint as a petition also for declaratory relief. This is left undismissed by this Court". As to further proceedings therein, however, the Court's opinion stated that, "The parties and the Trial Court . . . should be mindful of the fact that this Court has held that the entire cause was tainted by apparent collusion between the parties in the attempt to obtain an advisory opinion upon constitutional questions." (Appendix, p. 23).

REASONS FOR GRANTING THE WRIT

In substance, Petitioner prays for a writ of certiorari to reverse the erroneous judgment of the Court of Appeals, and to direct that court to review on the merits the important issues of statutory construction which are presented by the parties and the record and were determined by the judgment of the District Court. Petitioner is not seeking review and decision by this Court on the merits of the District Court's judgment which the Court of Appeals reversed on other grounds.

I.

IN DIRECTING DISMISSAL OF PETITIONER'S SUIT FOR DECLARATORY RELIEF, THE COURT BELOW HAS DECIDED A FEDERAL QUESTION IN A WAY CONFLICTING WITH APPLICABLE DECISIONS OF THIS COURT.

1. Petitioner's suit for declaratory relief presents an actual and important controversy concerning the legal relations between Petitioner and Respondents under the Act, which would be conclusively terminated by a declaratory judgment. The pendency of the counterclaim herein, which the court below declined to dismiss (Appendix, p. 23), is itself conclusive evidence of the serious, adversary, immediate and continuing controversy between the parties concerning the interpretation and application of the Act to particular employees engaged in clearly defined tasks during specified workweeks.[11] See also pp. 17-18, *infra*.

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[11] E.g., The District Court, in *Tennessee Coal, Iron & R. Co v. Muscoda Local*, pointed out:

> "Because many persons in the class of the defendants are making actual claims upon the several plaintiffs for overtime compensation, based on the contention made by defendants in these actions, a justiciable controversy is presented." 40 F. Supp. 4, 6 (N.D. Ala.) *aff'd.* 135 F. (2d) 320 and 137 F. (2d) 176 (C.C.A. 5), *aff'd.* 321 U. S. 590.

The circumstances of the instant case thus render inapplicable the precedents cited by the court below in which declaratory relief was refused because the suit was either moot, premature, or otherwise advisory in nature. (Appendix, p. 21, note 41, referring to the court's earlier opinion, Appendix, pp. 116-118, notes 16-28). Rather, under applicable decisions of this Court, it was manifest error for the Court of Appeals to reverse the judgment of the District Court for alleged abuse of discretion in entertaining Petitioner's suit for declaratory relief. See *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 239-242 (reversing both courts below); *Currin v. Wallace*, 306 U.S. 1, 9; *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 272-274 (reversing both courts below); *Altvater v. Freeman*, 319 U.S. 359, 363-366 (reversing Court of Appeals); *Tunstall v. Brotherhood*, 323 U.S. 210, 213-214 (reversing both courts below); *Railway Mail Ass'n. v. Corsi*, 326 U.S. 88, 93; *Order of Railway Conductors v. Swan*, 329 U.S. 520; *United Public Workers v. Mitchell*, 330 U.S. 75, 93; *Hilton v. Sullivan*, 334 U.S. 323; *McGrath v. Kristensen*, 340 U.S. 162, 169-171; *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 140-142 (reversing both courts below); 28 U.S.C. §2201; Rule 57, Federal Rules of Civ. Proc. 28 U.S.C.A.; Notes of Advisory Committee, *Id.* This Court has repeatedly approved application of declaratory judgment procedure to controversies concerning interpretation and application of the Fair Labor Standards Act. See *Tennessee Coal, Iron & R. Co. v. Muscoda Local*, 321 U.S. 590, 592; *Jewell Ridge Coal Corporation v. Local #6167*, 325 U.S. 161. To the same effect are repeated rulings by the lower Federal courts. E.g., *Bowie v. Claiborne*, (D.P. Rico) 1 Labor Cases ¶18,443, *aff'd. sub. nom. Bowie v. Gonzalez*, 117 F.(2d) 11 (C.C.A. 1); *Sunshine Mining Co. v. Carver*, 34 F. Supp. 274 (D. Idaho); *Green Head Bit & Supply Co. v. Hendricks*, 49 F. Supp. 698 (W.D. Okla.).

2. The Court of Appeals wholly misconceived the nature of the action when it directed dismissal and stated that "the entire cause was tainted by apparent collusion between the parties in the attempt to obtain an advisory opinion upon constitutional questions" (Appendix, p. 23).

The controversy between the parties, as presented by the record, briefs, and oral argument, revolved around the construction of the Act rather than the constitutional power of Congress over agricultural employment. Contrary to the implication of the court below, there was no agreement between the parties, by stipulation or otherwise, as to conclusions of law or constitutional power. The parties have been vigorous antagonists throughout the litigation, and neither Petitioner nor Respondents conceded any issue of fact or law which would have foreclosed any tenable argument supporting their respective positions.[12]

Nor can any contrary inference be drawn from the fact that counsel for both parties, as well as counsel for the Department of Labor (which appeared *amicus curiae*), separately and independently assumed in trial and argument that all the employees involved (other than those engaged in making dwelling repairs and maintaining re-

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[12] See particularly the Amended Complaint, paragraphs 10-13, R. 10-13); Answer and Counterclaim, paragraph V (R. 18); Reply and Answer to Counterclaim (R. 20-24); Notice of Appeal (R. 339); Statement of Points on Appeal (R. 673, 675).

The Court of Appeals' statements that the parties were in "agreement" or "apparent collusion" are especially inappropriate in view of notorious facts within the judicial notice of that court; namely, the intense antagonism, bitterness and strife that have unfortunately attended the relationship between the union here involved and Hawaiian employers for many years. The fact that this proceeding is decisive of similar problems affecting all Hawaiian sugar plantations (and large segments of continental agriculture) contributes to the desirability and importance of declaratory relief as prayed by the Petitioner. See *Stern and Gressman, Supreme Court Practice* (2d ed.) pp. 199-200.

lated domestic facilities)[13] were engaged in the production of goods for commerce. That assumption was made in good faith by the respective parties and was consistent with the applicable decisions of this Court. See *Farmers Reservoir Co. v. McComb*, 337 U.S. 755, 759. All parties rightly recognized that the constitutional power of Congress under the commerce clause reached the production of agricultural commodities destined for interstate movement. See *Wickard v. Filburn*, 317 U.S. 111, 118; *Santa Cruz Fruit Packing Co. v. Labor Board*, 303 U.S. 453; *Mandeville Farms v. Sugar Co.*, 334 U.S. 219, 236-237.

Petitioner had contended below, and the Court of Appeals' opinion specifically agreed, that all the employment here involved is exempt from the Act in view of the broad agricultural exemption in Sections 3(f) and 13(a)(6). The Court of Appeals therefore did not find it necessary to consider Petitioner's further contention that any employees not exempt under Section 13(a)(6) were exempt under the year-round exemption from overtime requirements for processing of sugarcane in Section 7(c). In any event Petitioner's declaratory judgment suit was properly founded upon the appropriate interpretation of these exemptions under the Act of Congress, rather than upon the erroneous constitutional argument adopted by the court below as the basis for its erroneous conclusion that

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[13] Petitioner contended that employees engaged in making dwelling repairs and maintaining related domestic facilities were not engaged in commerce or in the production of goods for commerce, within the meaning of the Act (R. 11-12). *Cf. Wilson v. Reconstruction Finance Corporation*, 158 F. (2d) 564 (C.C.A. 5), *cert. den.* 331 U.S. 810; *Morris v. Beaumont Manufacturing Co.*, 84 F. Supp. 909 (W.D. S.C.); *Coomer v. Durham*, 93 F. Supp. 526 (W.D. Va.). The Court of Appeals itself recognized that there was no agreement of the parties concerning application of the commerce coverage of the Act to this category of employees. Appendix, p. 2, note 2. Petitioner further contended, entirely apart from the commerce coverage of the Act, that these employees, as well as all others involved in the litigation, were exempt under Sections 13(a)(6) or Section 7(c) of the Act (R. 11, 12).

Petitioner had committed an "error in approach" which justified dismissal of its suit for declaratory judgment.

Manifestly the Court of Appeals should have addressed itself to the issues of statutory construction, under the established doctrine that federal courts will not pass upon constitutional questions unless unavoidable. *Alma Motor Co. v. Timken-Detroit Axle Co.*, 329 U.S. 129, 136-137. By injecting a constitutional issue not necessary to the decision or presented by the parties or the record, the Court of Appeals demonstrated a fundamental hostility to declaratory judgment procedure concerning statutory construction. The arbitrary refusal of declaratory relief in appropriate cases is wholly contrary to the intent of Congress as well as the repeated decisions of this Court in similar circumstances.[14]

3. The declaratory judgment suit was not rendered collusive because the parties stipulated to most of the facts. Where, as here, the parties have adverse interests in an actual controversy, "it is . . . a judicial act to give judgment" on the legal relationship which "the court finds to be established by stipulated facts". See *Pope v. United States*, 323 U.S. 1, 12 and cases there cited; *Tennessee*

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[14] In *Tennessee Coal, Iron & R. Co. v. Muscoda Local*, the Court of Appeals for the Fifth Circuit stated concerning the Declaratory Judgment Act:

> "This is a procedural statute that provides an additional remedy for use in cases of which the federal courts already have jurisdiction. It should be given a liberal construction and application. A court may not arbitrarily refuse to exercise such jurisdiction in a proper case, but must decide the issue presented in accordance with the law and the evidence. The procedure is expressly provided for in number 57 of the Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c, and the technicalities of equity practice do not prevail therein. The courts are limited in their jurisdiction to cases of actual controversy of a justiciable nature, thus excluding an advisory decree." 137 F. (2d) 176, 179, *aff'd.* 321 U.S. 590.

See also *Western Electric Co. v. Hammond*, 135 F.(2d) 283, 289 (C.C.A. 1).

Coal, Iron & R. Co. v. *Muscoda Local*, 137 F.(2d) 176, 179-180, *aff'd* 321 U.S. 590; *Federal Trade Commission* v. *Pacific States Paper Trade Ass'n.*, 273 U.S. 52, 60-63. The policy favoring stipulation of undisputed facts is embodied in the Federal Rules of Civil Procedure (Rule 16, 28 U.S.C.A.); and this practice is especially appropriate in a declaratory judgment suit which "often involves only an issue of law on undisputed or relatively undisputed facts". See Notes of Advisory Committee, Rule 57, Fed. Rules Civ. Proc. 28 U.S.C.A.[15]

The existence of an adversary controversy, and the absence of any collusion between the parties, is apparent from examination of the Petitioner's Amended Complaint (R. 10-14); Respondents' Answer and Counterclaim (R. 16, 18-19); Petitioner's Reply (R. 20-24); the Stipulation entered into by the parties (R. 37); Petitioner's Statement of Points on Appeal (R. 673 *et seq.*); and other detailed contentions of the parties in the two courts below. Most important, the District Court, which twice tried the issues herein, recognized the existence of the controversy (R. 619-620) and made findings of fact to that effect. Appendix, pp. 25-26; *cf. Guardian Life Ins. Co. v. Kortz*, 151 F.(2d) 582, 586 (C.C.A. 10). The District Court's conclu-

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[15] The cases cited by the court below (*supra* p. 13) are not relevant. E.g., in *United States v. Johnson*, 319 U.S. 302, plaintiff had brought in a fictitious name a suit instituted at defendant's request. The plaintiff had not employed or even met the attorney of record who appeared in his behalf; had not read the complaint filed in his name; had no knowledge of the amount of the judgment sought until advised in the local press; and had filed no brief. In *Lord v. Veazie*, 8 How. 251, there was no adversary relationship between the parties. This Court said, however, that stipulations by adverse parties of facts known to be true "far from being objects of censure, are always approved and encouraged, because they facilitate clearly the administration of justice". 8 How. at 255. In *Ward v. Alsup*, 100 Tenn. 619, 46 S.W. 573, also cited by the Court of Appeals, the state court indicated in a *dictum* that the suit would be fictitious if its main object were to affect third persons rather than to redress the plaintiff's grievance.

sion is entitled to great weight, and the Court of Appeals' reversal thereof was not founded upon any tenable basis in the record.

II.

THE JUDGMENT OF THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

1. In denying the petition for rehearing, the Court of Appeals called attention to "considerations of expense in futile proceedings" (Appendix, p. 23). From the outset of this complex litigation in 1947, Petitioner has indeed been mindful of such considerations; and it is one of the acknowledged advantages of declaratory judgment suits to avoid piecemeal, dilatory and expensive litigation. Cf. cases cited *supra*, p. 13; and see *Davis v. American Foundry Equipment Company*, 94 F.(2d) 441, 442 (C.C.A. 7); *Inland Mutual Insurance Co. v. Eastern Motor Lines*, 119 F. Supp. 344, 349 (W.D.S.C.). The course of proceedings hereinabove described (pp. 7-10) demonstrates the care, attention and effort expended by Petitioner in complying with every requirement laid down by the Court of Appeals in its opinion on the first appeal. That opinion, while criticizing the declaratory judgment suit in a number of particulars, did not direct its dismissal. Recognizing the discretion which rested in the District Court to entertain the action, the Court of Appeals on that occasion remanded for further proceedings including, as one suggested alternative, "the entry of detailed findings as to each employee defendant, based upon an adequate record". *Supra*, p. 7. The entire proceeding on remand manifested the most meticulous compliance by the parties and the District Court with every requirement indicated in the first opinion

of the Court of Appeals.[16] Nowhere in its first opinion did the court below express or even imply that such compliance would eventuate in a second reversal upon the entirely new basis of alleged "collusion" advanced in the second opinion; namely that the parties had failed to raise the constitutional question.

Petitioner is constrained to conclude, and respectfully submits, that the expense of futile proceedings must be attributed to the error of the Court of Appeals in departing so markedly from the usual course of judicial proceedings as to require the exercise of this Court's power of supervision.

In the circumstances disclosed by the record, this Court should reverse the judgment of the Court of Appeals and direct that it review on the merits the District Court's judgment in Petitioner's suit for declaratory relief. See *Altvater v. Freeman* and other cases cited *supra* p. 13; *cf. Labor Board v. Donnelly Garment Co.*, 330 U.S. 219, 226-228.

2. The counterclaim arose out of the same transaction or occurrence as the suit for declaratory relief. The District Court had jurisdiction over the counterclaim entirely independent of its jurisdiction over the declaratory judgment suit; and the Court of Appeals therefore erred in failing to review on the merits the District Court's adjudication of the counterclaim, after reversing the money judgment awarded by the District Court. See *Altvater v.*

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[16] Thus: (1) the judgment of the District Court gave a mandate as to each Respondent; (2) detailed and specific findings of fact were entered as to each such Respondent; (3) the action was limited in time to the period November 20, 1946 to and including September 14, 1947; (4) the class representation aspects of the action were eliminated; (5) the union and union official were dropped as parties defendant; (6) a single trial was had of both the Petitioner's suit for declaratory judgment and Respondents' counterclaim under Section 16(b) of the Act; (7) twenty-two of the forty-two respondents testified orally in the action.

Freeman, 319 U.S. 359, 363-364, 366; *Pioche-Mines Consol. Inc. v. Fidelity-Phila. Trust Co.*, 206 F.(2d) 336 (C.C.A. 9); *Isenberg v. Biddle*, 125 F.(2d) 741, 743 (App. D.C.); *Lion Mfg. Corp. v. Chicago Flexible Shaft Co.*, 106 F.(2d) 930, 933 (C.C.A. 7); *Vidal v. South American Securities Co.*, 276 Fed. 855, 874 (C.C.A. 2); *U.S. Industrial Chemicals Inc. v. Carbide & Carbon Corp.*, 52 F.Supp. 164, 166 (S.D. N.Y.). This erroneous disposition by the Court of Appeals involves important issues directly affecting the Petitioner,—issues which have been tried and determined in the District Court, which have been fully briefed and argued in the Court of Appeals, and which nevertheless have not been disposed of by opinion and judgment of that court.

The Federal Rules of Civil Procedure as a whole frown upon piecemeal disposition of actions. *Eastern Transportation Co. v. United States*, 159 F.(2d) 349, 351-352 (C.C.A. 2); *Manchester Gardens v. Great West Life Ass. Co.*, 205 F.(2d) 872, 875 (App. D.C.); *Gold Seal Co. v. Weeks*, 209 F.(2d) 802 (App. D.C.); *3 Moore, Federal Practice* (2d ed.), pp. 46-47. Federal Rules 15(b) and 54(c) also direct that an appropriate judgment be entered on the substance of an action irrespective of any technical errors in legal theory or approach or in demand for judgment. *Atwater v. North American Coal Corp.*, 111 F.(2d) 125, 126 (C.C.A. 2); *Gins v. Mauser Plumbing Supply Co.*, 148 F.(2d) 974, 976 (C.C.A. 2); *Blazer v. Black*, 196 F.(2d) 139, 147 (C.C.A. 10); *American Universal Ins. Co. v. Sterling*, 203 F.(2d) 159, 164 (C.C.A. 3).

The court below recognized that each of the Respondents had a remedy at law by damage suit under Section 16(b) of the Act (Appendix, p. 21, note 44), but the court overlooked that the counterclaim in the record before it was based on precisely that right of action. *Supra*, p. 8. When this was called to the court's attention on rehearing, it proceeded to construe the counterclaim "as a petition

also for declaratory relief" (Appendix, p. 23), although the counterclaim contained no such prayer.

The Court of Appeals erred in thus refusing to review on the merits the District Court's adjudication of the counterclaim after it had reversed the District Court's money judgment for Respondents thereunder.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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